

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS FRITZ,
Petitioner,
v.
LAURIEN SMITH, et al.,
Respondents.

Case No. [15-cv-01534-DMR](#) (PR)

**ORDER ACKNOWLEDGING
PETITIONER'S VOLUNTARY
DISMISSAL OF THIS ACTION**

On April 3, 2015, Petitioner filed a document with the court in the instant case, which was opened as a habeas corpus action. Petitioner has consented to magistrate judge jurisdiction in this matter. Dkt. 4 at 1.

On the same day the action was filed the Clerk of the Court sent a notice to Petitioner informing him that his action could not go forward until he filed with the court a habeas corpus petition form, completed in full, within twenty-eight days or his action would be dismissed. He was also sent another notice directing him to either pay the filing fee or file a completed prisoner's *in forma pauperis* ("IFP") application. The Clerk sent Petitioner a blank IFP application and told him that he must pay the fee or return the completed application within twenty-eight days or his action would be dismissed.

Before the court is Petitioner's "Motion to Dismiss," in which he moves for the court to dismiss the above-referenced action because he has "found an 'out of court settlement.'" Dkt. 5 at 1.

Rule 41 of the Federal Rules of Civil Procedure grants a party bringing an action the absolute right to dismiss such action by filing a notice of dismissal "at any time before service by the adverse party of an answer or of a motion for summary judgment." *See* Fed. R. Civ. P. 41(a)(1)(i). Said dismissal may be with or without prejudice, but unless the notice of dismissal states otherwise, it is deemed to be "without prejudice." *See* Fed. R. Civ. P. 41(a)(1); *Humphreys v. United States*, 272 F.2d 411, 412 (9th Cir. 1959). No court order is required. The notice of dismissal is effective by itself to terminate the action: "[A]n action may be dismissed by [a party]

without order of the court . . . by filing a notice of dismissal.” Fed. R. Civ. P. 41(a)(1); *see also* *Hamilton v. Shearson-Lehman Am. Exp. Inc.*, 813 F.2d 1532, 1534-36 (9th Cir. 1987) (Rule 41(a)(1)(i) does not require leave of court to dismiss the action).

The court will construe Petitioner’s “Motion to Dismiss” as a notice of dismissal. Petitioner’s notice of dismissal was filed before service by the adverse party of an answer; therefore, the court finds that Petitioner has the absolute right to dismiss his action voluntarily. *See* Fed. R. Civ. P. 41(a)(1)(i). Based on Petitioner’s request for voluntary dismissal, the court acknowledges that this action is DISMISSED without prejudice. *See id.*

The Clerk shall enter judgment, terminate all pending motions, and close the file.

This Order terminates Docket No. 5.

IT IS SO ORDERED.

Dated: May 1, 2015



DONNA M. RYU
United States Magistrate Judge